

At the present time, the carriers can accurately determine from their regularly maintained accounting records the amount of revenue accruing from regular route operations, separately for passenger and express service, and from operations in connection with charter and special service. By means of established probability sampling procedures, Greyhound and Continental Trailways can further separate passenger revenue in intercity service between interstate and intrastate traffic. Other carriers are able to make the latter separation of revenue on various bases consistent with the size of their operations. It is possible that the probability sampling procedure and other bases employed by the smaller carriers may be expanded to include statistical data as well as revenue information. The bus lines currently maintain records, for the purpose of their annual reports to the Surface Transportation Board, of the number of bus miles operated separately for intercity service, local service and special services. Such data will undoubtedly come into use in allocating expenses among services. Similarly, records of the number of passengers carried in various services, maintained by the bus lines, may be used in some of the expense allocations. However, no continuing records are maintained showing the number of passengers carried separately in interstate and intrastate commerce nor are any separations made of the number of passenger miles in each category. Such statistical separations are required regardless of the methodology followed in the cost study, that is, whether the separations of expenses between interstate and intrastate traffic are made within the framework of a cost allocation formula or whether the expenses in each category are developed on the basis of average mileage-related and non-mileage unit costs developed from a cost formula and applied to traffic service units developed for interstate and intrastate traffic, i.e., number of passengers and number of passenger miles.

As noted above, expenses for each type of traffic must be separated between those which are related to mileage operated and those which are not related to mileage. This brings in the problem of segregating the terminal activities of the carriers among services and types of traffic. Segregation of such expenses will probably require time and motion analyses, calculation of space utilization factors at various representative terminals and other special studies.

The formulation of a cost allocation system and the gathering of input data for the system will require an extensive amount of work and expense on the part of the bus lines. If the amount of time required in developing acceptable cost allocation procedures for general freight motor carriers is any indication, several years may be required before a cost system for the bus lines

can be formulated, applied and tested. The bus industry recognizes that, because of its workload and limited staff, the Cost Finding Section of the Board cannot take on the task of developing a cost allocation system for the bus lines as it did in connection with general freight motor carriers; however, it is hoped that the efforts of the bus lines in this regard will receive the full support and guidance of the Board's staff so that the best possible results may be achieved in the shortest possible time.

H. G. HOMME,  
*Secretary.*

[42 FR 32541, June 27, 1977. Redesignated at 47 FR 49571, Nov. 1, 1982 and amended at 64 FR 53268, Oct. 1, 1999]

## PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

AUTHORITY: 49 U.S.C. 721.

### § 1141.1 Procedures to calculate interest rates.

(a) For purposes of complying with a Board decision in an investigation or complaint proceeding, interest rates to be computed shall be the most recent U.S. Prime Rate as published by The Wall Street Journal. The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the date the statement is filed accounting for all amounts received under the new rates.

(2) For complaint proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the day when the unlawful charge is paid. The interest rate in complaint proceedings shall be updated whenever The Wall Street Journal publishes a change to its reported U.S. Prime Rate. Updating will continue until the required reparation payments are made.

(b) For investigation proceedings, the reparations period shall begin on the date the investigation is started. For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid.

(c) For both investigation and complaint proceedings, the annual percentage rate shall be the same as the annual nominal (or stated) rate. Thus,

the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this “exponential” approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each period by the principal amount for that period plus any accumulated interest from previous periods. The “interest factor” for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate.

[78 FR 44460, July 24, 2013]

## PART 1144—INTRAMODAL RAIL COMPETITION

Sec.

1144.1 Negotiation.

1144.2 Prescription.

1144.3 General.

AUTHORITY: 49 U.S.C. 721, 10703, 10705, and 11102.

SOURCE: 67 FR 61290, Sept. 30, 2002, unless otherwise noted.

### § 1144.1 Negotiation.

(a) *Timing.* At least 5 days prior to seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party's right to file a timely request for prescription.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Board.

### § 1144.2 Prescription.

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11102, if the Board determines:

(1) That the prescription or establishment is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive, and otherwise satisfies the criteria of 49 U.S.C. 10705 and 11102, as appropriate. In making its determination, the Board shall take into account all relevant factors, including:

(i) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(ii) The efficiency of the rail routes in question, including the costs of operating via those routes.

(iii) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(iv) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competition standards of this section; and

(2) That either:

(i) The complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) Other considerations. (1) The Board will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or